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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/925,696 | 08/09/2001 | Ing Vojtech Benetka | PH44 | 4284 |

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EXAMINER

HAAS, WENDY C

ART UNIT PAPER NUMBER

1661

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 1661

Rule 105 Requirement for Information

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

The information is required to determine when, the claimed plant variety, 'Pink Poppet', was publicly available prior to the filing date of the instant application.

The claimed Weigela plant 'Pink Poppet' is described under the names "Plangen" and "Piccolo" in previously cited Plant Breeder's Right (PBR) application's from the CPVO and Czech Republic. The information is published by each entity and is a form of public notice. Thus, the public was aware of the instant plant more than one-year prior to the filing date of this instant application.

Given this information, the application is a printed publication under the guidelines set forth in *In re Wyer*. See *In re Wyer*, 655 F.2d 221,226,210 USPQ 790,794 (CCPA 1981). See also MPEP § 2128. The Plant Breeder's Right application is enabled if the disclosed cultivar could have been propagated from publicly available materials. One skilled in the art would have the knowledge of how to do so, given the notoriety of various methods of asexual propagation.

A printed publication can serve as a statutory bar under 35 U.S.C. 102(b) if the reference, combined with knowledge in the prior art, would enable one of ordinary skill in the art to reproduce the claimed plant. *In re Le Grice*, 301 F.2d 929,133 USPQ 365 (CCPA 1962). If one skilled in the art could obtain or reproduce the plant from a publicly available source, then a publication describing the plant would have an enabling disclosure. See *Ex parte Thomson*, 24 USPQ2d 1618, 1620 (Bd. Pat. App. & Inter. 1992) ("The issue is not whether the [claimed] cultivar Siokra was on public use or sale in the United States but, rather, whether 'Siokra' seeds were available to a skilled artisan anywhere in the world such that he/she could attain them and make/reproduce the cultivar Siokra disclosed in the cited publications.").

The publication cited above discloses the claimed variety. However, a question remains as to the accessibility of any foreign sales of the claimed plant, the reproducibility of the claimed plant and whether one of ordinary skill in the art would have known of any foreign sale. The foreign sale must not be an obscure, solitary occurrence that would go unnoticed by those skilled in the art.

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

The information is required to determine whether the plant was available to the public, accessibility of any foreign sales and the reproducibility of any plants that were sold to the public, more than one year prior to the effective filing date of this application.

Art Unit: 1661

In response to this requirement please provide:

- a) information available regarding the sale or other public distribution of the claimed plant variety **anywhere in the world**, including the date(s) and location of any sale or other public distribution including any public information available regarding sales, offers for sale, or public distributions of the claimed plant variety that occurred more than one year prior to the effective filing date of this application, including information pertaining to whether this was an obscure, solitary occurrence that would go unnoticed by those skilled in the art;
- b) a copy of any publications or advertisements relating to sales, offers for sale, or public distributions of the claimed plant variety anywhere in the world if the sale, offer for sale, or public distribution occurred more than one year prior to the effective filing date of this application;
- c) any information relating to the accessibility or non-accessibility of the claimed plant that one of ordinary skill in the art could have derived from the printed PBR document or other sources;
- d) Applicant is invited to submit any information that would indicate that one of ordinary skill in the art would not have known how to successfully reproduce the plant.

The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. If an item required by the examiner is unknown to the applicant, a statement that the item is unknown to applicant will be accepted as a complete response to the requirement for that item. Where the applicant does not have and cannot readily obtain an item of required information, a statement that the item cannot be readily obtained will be accepted as a complete response to the requirement for that item.

This requirement is an attachment of the enclosed Office action. A complete reply to the enclosed Office action must include a complete response to this requirement. **The time period for reply to this requirement is 2 months.** This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).**

Future Correspondence

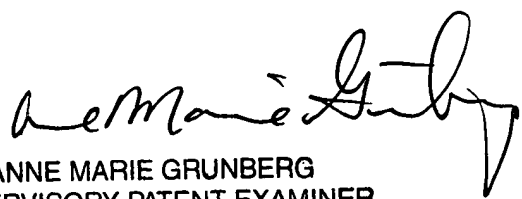
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wendy C. Haas whose telephone number is (571) 272-0976. The examiner can normally be reached on Monday through Friday from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

W. C. Haas, J.D.


WENDY HAAS
PATENT EXAMINER


ANNE MARIE GRUNBERG
SUPERVISORY PATENT EXAMINER